IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

TUESDAY, THE 13TH FEBRUARY 2007 / 24TH MAGHA 1928

RCRev..No. 125 of 2005()

{R.C.A.NO.42/2000 OF THE I ADDITIONAL DISTRICT COURT, TRIVANDRUM
IN R.C.P.NO.85/1998 OF THE IST ADDITIONAL MUNSIFF'S COURT, TRIVANDRUM}
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REVISION PETITIONERS/RESPONDENTS/
COUNTER PETITIONERS:
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1. SOOSAN CHARLES, 'RAJMAHAL', T.C 3/784, KURUNGANOOR MURI, PATTOM P.O., THIRUVANANTHAPURAM.

2. V.C.CHARLES, --DO----
-----DO---

BY ADV. SRI.B.KRISHNA MANI
SRI.S.GOPAKUMARAN NAIR & SMT.S.SIBHA

RESPONDENTS: RESPONDENT/RESPONDENT/PETITIONER:
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1. ANNAMMA JOSEPH, "MANNANKUZHIYIL HOUSE", KESAVADASAPUAM, PATTOM P.O., THIRUVANANTHAPURAM.

2. JOSEPH JOHN, RESIDING AT ---DO----
AND NOW EMPLOYED AT SISEO, DAMAM, SAUDI ARABIA.

3. TOMY JOSEPH,
RESIDING AT ----DO---- ----DO---

BY ADV. SRI.L.MOHANAN

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 13/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

DISMISSED.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(ANTONY DOMINIC)
13.02.2007. JUDGE

sk/-

//true copy//

P.S. To Judge.

K.A.ABDUL GAFOOR &
ANTONY DOMINIC, JJ.

R.C.R.No.125 of 2005 F

Dated this the 13th day of February, 2007.

JUDGMENT

ANTONY DOMINIC, J.

The tenants in the Rent Control Proceedings are the revision petitioners.

2. It is seen that the Rent Control Petition was filed by the landlords before the Rent Control Court, Thiruvananthapuram, seeking eviction of the tenants on grounds under Sections 11(2)(b), 11(3) and 11(8) of the Kerala Buildings (Lease and Rent Control) Act [Act 2 of 1965] {hereinafter referred to as 'the Act'}.

3. The pleadings in the Rent Control Petition would show that the landlords had pleaded necessity for additional accommodation

for finding space for the members of the family. In addition, the landlords had also stated that the 3rd petitioner wanted to set up a business of his own in the tenanted premises, it being the ground under Section 11(3) of the Act. After taking evidence, the Rent Control Court, by order dated 21.10.1999, disposed of the petition allowing the petition under Section 11(2) (b) of the Act and dismissing the petition under Sections 11(3) and 11(8) of the Act. Although, the requirement under Section 11(3) of the Act was found to be bona fide, eviction was declined to the landlords extending the benefit of the second proviso to Section 11(3) of the Act to the tenants.

4. The appeal filed by the landlords before the appellate authority was disposed of

confirming the findings of the Rent Control Court under Section 11(2)(b) of the Act and also reversing the findings under Sections 11(3) and 11(8) of the Act. It is against this order of the appellate authority that the tenants have come up in revision.

5. As we have already noted, the grounds under Sections 11(3) and 11(8) of the Act have been urged by the landlords in the Rent Control Petition. It is submitted by the petitioners/landlords, who are already in possession of a portion of the building that there is necessity for additional accommodation and also that the third petitioner wanted to set up a business of his own. We have been referred to the decision of this court in **Indian Saree House v. Radhalakshmy {2006(3) KLT 129}**

in which, it has been categorically held that the grounds under Sections 11(3) and 11(8) are mutually exclusive in nature and cannot go together, particularly on account of the fact that the ground under Section 11(3) is urged for the third petitioner to set up a business of his own. In view of this, we have to hold that the ground under Section 11(3) is not available to the landlords.

6. However, at the appellate stage, requirement under Section 11(8) of the Act, was found in favour of the landlords. In paragraph 19 of the Appellate Authority's order, the appellate authority has also dealt with the comparative hardship under Section 11(10) and this has been found in favour of the landlords. In view of that, we confirm the finding of the

appellate authority under Section 11(8) in favour of the landlords.

7. It is submitted that the 3rd petitioner in the Rent Control Petition is now employed abroad and hence the need does not subsist now. However, such residence of the 3rd petitioner is in connection with his employment and is only temporary and that cannot extinguish the necessity of the landlords under Section 11 (8). Hence, we do not find any ground to interfere with the findings of the Rent Control Appellate Authority and the revision petition, therefore, stands dismissed.

At this juncture, counsel for the revision petitioners/tenants sought for time to surrender vacant possession of the building to the landlords. After hearing the parties, we are

inclined to grant four months' time to the tenants to surrender vacant possession to the landlords, on condition that they shall file an affidavit before the Execution Court undertaking to surrender vacant possession of the building to landlords on the expiry of four months from today and also subject to the further condition that they will continue to pay the agreed rent until such vacant possession is surrendered.

Sd/-
(K.A.ABDUL GAFOOR)
JUDGE

Sd/-
(ANTONY DOMINIC)
JUDGE

sk/

//true copy//

K.A.ABDUL GAFOOR &
ANTONY DOMINIC, JJ.

R.C.R.No.125 of 2005 F

O R D E R

13th February, 2007.